A

Mohammad Sobri bin Saad v See Jovin & Ors

B HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22NCC-535–07 OF 2023
MOHD ARIEF J
23 MAY 2024

C *Civil Procedure — Discovery — Discovery of documents — Plaintiff's application for discovery of information in Bursa Malaysia's Central Depository System — Whether plaintiff's application fell within requirements of O 24 r 7A of Rules of Court 2012 — Whether disclosure of such information was prohibited under s 43 of Securities Industry (Central Depositories) Act 1991 — Whether* D *plaintiff's claim fell within category of cases recognised under ss 45(1)(c), (d), (j), (l), 58(1)(c), 107G(c), (d), (e) & (h) of Securities Industry (Central Depositories) Act 1991*

This was the plaintiff's application for discovery of documents pertaining to E the details of the transactions by several individuals to know whether the shares in a company known as EA Holdings Bhd that were previously held in the plaintiff's name were transferred by the said individuals. The plaintiff argued that Bursa Malaysia had the required information in its Central Depository System ('the CDS') and that Bursa Malaysia should assist the plaintiff by F providing such information to the plaintiff to enable the plaintiff to file his claim against the defendants and the said individuals. The plaintiff contended that this application ought to be allowed as it fell squarely within the requirements of O 24 r 7A of the Rules of Court 2012.

G **Held**, dismissing the plaintiff's application with costs:

(1) On a plain reading of the affidavits filed by the plaintiff, it would appear that the plaintiff fulfilled the test laid down in the case of *Billion Prima Sdn Bhd v Nutech Co Ltd & Anor* [2017] 10 MLJ 213. However, the H court was unable to accede to the said application as s 43 of the Securities Industry (Central Depositories) Act 1991 ('Act 453') prohibited the disclosure of such information and documents to third parties, such as the plaintiff, unless the application fell within the categories allowed under s 45 of Act 453 (see paras 7 & 10).

I (2) The court found that the plaintiff's personal claim did not fall within the category of cases recognised under s 45(1)(c), (d), (j) and (l) of Act 453. Similarly, the court did not find that this case fell within the category recognised under s 107G(c), (d), (e), and (h) of Act 453 and whether Bursa Malaysia and the CDS scheme were bound by the said

proviso to allow disclosure of such documents and information to the plaintiff. With respect to s 58(1)(c) of Act 453, for this proviso to be applicable, the plaintiff must show a breach of a requirement that was either imposed by the said Act, a breach of any condition or restriction or any approval that was given under the said Act or any breach of any condition or rule or restriction imposed by the rules of the central depository. The plaintiff had not shown the existence of any such breach in its affidavits or in the statement of claim justifying the exercise of such powers provided under s 58(1)(c) of Act 453. There was no nexus between the plaintiff's claim as pleaded in the present suit with the rights and powers granted to the court under the above statutes relied on by the counsel for the plaintiff (see paras 13–14 & 18–21).

[Bahasa Malaysia summary

Ini adalah permohonan plaintif bagi penzahiran dokumen berkaitan butiran transaksi oleh beberapa individu untuk mengetahui sama ada saham-saham dalam Syarikat yang dikenali sebagai EA Holdings Bhd yang sebelum ini dipegang atas nama plaintif telah dipindahkan oleh individu-individu tersebut. Plaintif berhujah bahawa Bursa Malaysia mempunyai maklumat yang diperlukan dalam Sistem Depositori Pusatnya ('CDS') dan Bursa Malaysia harus membantu plaintif dengan memberikan maklumat sedemikian kepada plaintif untuk membolehkan plaintif memfailkan tuntutannya terhadap defendan-defendan dan individu-individu tersebut. Plaintif berhujah bahawa permohonan ini sepatutnya dibenarkan kerana ia benar-benar mengikut kehendak A 24 k 7A Kaedah-Kaedah Mahkamah 2012.

Diputuskan, menolak permohonan plaintif dengan kos:

(1) Pada bacaan biasa afidavit yang difailkan oleh plaintif, kelihatannya plaintif memenuhi ujian yang ditetapkan dalam kes *Billion Prima Sdn Bhd v Nutech Co Ltd & Anor* [2017] 10 MLJ 213. Bagaimanapun, mahkamah tidak dapat menerima permohonan tersebut memandangkan s 43 Akta Perindustrian Sekuriti (Depositori Pusat) 1991 ('Akta 453') melarang pendedahan maklumat dan dokumen tersebut kepada pihak ketiga, seperti plaintif, melainkan permohonan tersebut termasuk dalam kategori-kategori yang dibenarkan di bawah s 45 Akta 453 (lihat perenggan 7 & 10).

(2) Mahkamah mendapati tuntutan peribadi plaintif tidak termasuk dalam kategori kes-kes yang diiktiraf di bawah s 45(1)(c), (d), (j) dan (l) Akta 453. Begitu juga mahkamah tidak mendapati bahawa kes ini termasuk dalam kategori yang diiktiraf di bawah s 107G(c), (d), (e) dan (h) Akta 453 dan sama ada Bursa Malaysia dan skim CDS tersebut terikat dengan proviso tersebut untuk membenarkan penzahiran dokumen dan maklumat tersebut kepada plaintif. Berkenaan dengan s 58(1)(c) Akta 453, untuk menggunakan proviso ini, plaintif perlu menunjukkan

pelanggaran keperluan yang sama ada dikenakan oleh Akta tersebut, pelanggaran mana-mana syarat atau sekatan atau apa-apa kelulusan yang diberikan di bawah Akta tersebut atau apa-apa pelanggaran mana-mana syarat atau peraturan atau sekatan yang dikenakan oleh peraturan-peraturan bagi depositori pusat tersebut. Plaintif tidak menunjukkan kewujudan apa-apa pelanggaran tersebut dalam afidavitnya atau dalam pernyataan tuntutannya bagi mewajarkan pelaksanaan kuasa sedemikian yang diperuntukkan di bawah s 58(1)(c) Akta 453. Tiada hubungan antara tuntutan plaintif seperti yang diplid dalam saman semasa dengan hak dan kuasa yang diberikan kepada mahkamah di bawah statut-statut di atas yang disandarkan oleh peguam plaintif (lihat perenggan 13–14 & 18–21).]

Cases referred to

Bank Bumiputra (M) Bhd v Cheong Yoke Choy (Malaysian Central Depository Sdn Bhd, proposed intervener) [2000] 7 MLJ 323; [2000] 7 CLJ 157, HC (distd)

Billion Prima Sdn Bhd v Nutech Co Ltd & Anor [2017] 10 MLJ 213, HC (refd)

Lai Soon Onn v Chew Fei Meng and other appeals [2019] 2 MLJ 96, CA (refd)

Suruhanjaya Sekuriti v Datuk Ishak bin Ismail [2016] 1 MLJ 733; [2016] 3 CLJ 19, FC (refd)

Legislation referred to

Capital Markets and Services Act 2007 ss 107G(c), (d), (e), (h), 360

Rules of Court 2012 O 24 rr 7A, 7A(2), (3)(b), (4), (5), 8

Securities Industry (Central Depositories) Act 1991 ss 43, 45, 45(1)(c), 58, 58(1)(c)

Wong Kah Hui (with Emily Chua Yan Feng) (KH Wong & Co) for the plaintiff.
Terrence Lee (Terrence Lee & Co) for the third defendant.
Brendan Siva (with Aida Haryani) (Brendan Siva) for the defendant.

Mohd Arief J:

INTRODUCTION

[1] The plaintiff applies for discovery of documents pertaining to the details of the transactions by the named individuals in the table below and whether shares in the company known as EA Holdings Bhd that were previously held in his name were transferred or transacted by the said individuals:

Shareholders in EA Holdings Berhad	Ordinary shares that were held by the respective shareholders on respective trading days

	Record of Depositors dated 21 June 2023	Record of Depositors dated 30 June 2023	Record of Depositors dated 27 July 2023
Mohammad Sobri bin Saad Pledged Securities Account under Affin	500,000,000	–	–
Hwang Nominees (Tempatan) Sdn Bhd			
Mohammad Sobri bin Saad	500,000,000	–	–
Mohammad Sobri bin Saad Pledged Securities Account under Kenanga Nominees (Tempatan) Sdn Bhd	133,424,300	81,424,300	81,424,300
Ng Cheng Shin	–		656,184,000
Keh Chuan Choon Pledged Securities Account under TA Nominees (Tempatan) Sdn Bhd	–	100,000,000	100,000,000
Keh Chuan Choon Pledged Securities Account under Alliance Group Nominees (Tempatan) Sdn Bhd	–	66,000,000	66,000,000

Keh Chuan Choon Pledged Securities Account under Philip Nominees (Tempatan) Sdn Bhd	–	40,000,000	40,000,000
Keh Chuan Yee Pledged Securities Account under CGS-CIMB Nominees (Tempatan) Sdn Bhd	–	90,500,000	75,000,000
Keh Chuan Yee Pledged Securities Account under Philip Nominees (Tempatan) Sdn Bhd	–	14,000,000	14,000,000
Keh Chuan Seng Pledged Securities Account under Philip Nominees (Tempatan) Sdn Bhd	–	42,000,000	42,000,000
Keh Chuan Seng Pledged Securities Account under Alliance Group Nominees (Tempatan) Sdn Bhd	–	10,500,000	10,500,000
Tan Yun Quan	–	230,000,000	230,000,000

Pledged Securities Account under Alliance Group Nominees (Tempatan) Sdn Bhd			
Tan Yee Li Pledged Securities Account under TA Nominees (Tempatan) Sdn Bhd	–	200,000,000	200,000,000
Chu Kerd Yee Pledged Securities Account under Affin Hwang Nominees (Tempatan) Sdn Bhd	–	192,848,400	192,848,400
Loo Woei Jye Pledged Securities Account under TA Nominees (Tempatan) Sdn Bhd	–	65,000,000	65,000,000
Tan Hwa Sing	–	31,500,000	31,500,000
Carmen Quah	–	25,685,400	21,500,000
Ng Cheng Tat Pledged Securities Account under Alliance Group Nominees (Tempatan) Sdn Bhd	–	–	117,000,000
Goh Phaik Lim	–	140,000,000	–
Goh Phaik Lim	–	120,000,000	–

Pledged Securities Account under TA Nominees (Tempatan) Sdn Bhd			
Goh Phaik Lim Pledged Securities Account under Alliance Group Nominees (Tempatan) Sdn Bhd	–	60,000,000	–
Tan Guat Kee	–	117,000,000	–
Khor Chuan Meng Pledged Securities Account under TA Nominees (Tempatan) Sdn Bhd	–	80,000,000	–
Cheong Kai Meng Pledged Securities Account under M&A Nominees (Tempatan) Sdn Bhd	–	76,000,000	–
Cheong Kai Meng Pledged Securities Account under TA Nominees (Tempatan) Sdn Bhd	–	43,799,800	–
Gan Boon Chew	–	74,500,000	–
Chan Kay Ding		20,500,000	

Pledged Securities Account under Affin Hwang Nominees (Tempatan) Sdn Bhd			

[2] The plaintiff contends that Bursa Malaysia has the requisite information on these individuals through the Central Depository System maintained by Bursa Malaysia and that the said entity should assist the plaintiff in providing such information to enable the plaintiff to continue with its claim against the defendants and the said individuals.

[3] Bursa Malaysia is not agreeable to disclose the said information and opposes this application.

[4] This court has considered the plaintiff's application and find that the application for discovery should not be allowed for reasons put forth by Bursa Malaysia. My reasons for not granting the said application are as follows.

DECISION OF THIS COURT

[5] The plaintiff contends that this application should be allowed as it allegedly falls squarely within the requirements of O 24 r 7A of the Rules of Court.

[6] I refer to the decision of Wong Kian Kheong J in *Billion Prima Sdn Bhd v Nutech Co Ltd & Anor* [2017] 10 MLJ 213 that lays down the applicable law on this area when dealing with an application for discovery against a third party:

(a) the applicant's affidavit in support of the discovery application against third party shall specify or describe with reasonable precision as to the documents sought (O 24 r 7A(3)(b) of the ROC 2012);

(b) the applicant's affidavit in support shall show, if practicable by reference to any pleading served that the documents are relevant to an issue arising or likely to arise out of the claim made (O 24 r 7A(3)(b) of the ROC 2012);

(c) the applicant's affidavit in support shall show that the person against whom the order is sought is likely to have or have had the documents in his possession, custody or power. This would include third parties who are 'likely' to have or have had the documents in their possession, custody

A or power, on the adoption of a purposive interpretation by the courts (O 24 r 7A(3)(b) of the ROC 2012);

(d) the applicant bears the legal onus to satisfy the court that a discovery application against a third party is necessary either to fairly dispose of the
B pending suit or to save costs (O 24 r 8 of the ROC 2012);

(e) the documents are not privileged, and the third party can be compelled by an order to produce the documents (O 24 r 7A(5) of the ROC 2012); and

C (f) the discovery application against third party and applicant's affidavit in support shall be served personally on the third party and on every party in the pending suit (O 24 r 7A(2) and 7A(4) of ROC 2012).

[7] On a plain reading of the affidavits filed by the plaintiff it would appear
D that the plaintiff fulfills the above test. However, this Court is unable to accede to the said application as s 43 of the Securities Industry (Central Depositories) Act 1991 prohibits the disclosure of such information and documents to third parties, such as the plaintiff, unless the application falls within the categories allowed by the said statute.

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[8] Section 43 of the Securities Industry (Central Depositories) Act 1991 is reproduced for convenience:

> (1) Except as provided in this Act, no director or officer of a central depository
F or an authorized depository agent, whether during his tenure of office or during his employment or thereafter, and no other person who has by any means access to any information or document whatsoever relating to the affairs of any of the depositors, and in particular, relating to their securities accounts, shall give, divulge, reveal or otherwise disclose such information or document to any person.
>
G (2) No person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner howsoever disclose the same to any other person.
>
> (3) A person who contravenes this section shall be guilty of an offence and
H shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

[9] It is clear from the said proviso that Bursa Malaysia is prohibited from giving, divulging, revealing or disclosing any information or document relating
I to the affairs of any depositors. This extends to the depositors securities accounts (the CDS accounts).

[10] Disclosure will only be allowed if the circumstance of this case falls within any of the categories allowed under s 45 of the Securities Industry

(Central Depositories) Act 1991. I reproduce the said proviso for ease of reference.

> (1) Subject to the provision of this Act, nothing in any other law or section 43 shall entitle any person to refuse to disclose any information or document —
>
> (a) which the depositor, or his personal representative, has given permission in writing to disclose;
>
> (b) in a case where the depositor is declared a bankrupt, or, if the depositor is a corporation, the corporation is being or has been wound up, in Malaysia or in any country, territory or place outside Malaysia
>
> (c) for the purpose of instituting or, in the course of, any civil proceedings —
>
> (i) between a central depository or an authorized depository agent and a depositor relating to the securities account of the depositor; or
>
> (ii) between a central depository or an authorized depository agent and two or more parties making adverse claims to securities or monies in the securities account of the depositor, where the central depository or authorized depository agent seeks relief by way of interpleader;
>
> (d) to any person duly authorized to investigate into any offence under any law, such disclosure being, in any case, limited to the securities account and affairs of the depositor suspected of the offence;
>
> (e) to a central depository for purposes of the compilation of the record of depositors, or any part thereof, under section 34 of this Act;
>
> (f) to an issuer in respect of a record of depositors issued under section 34 of this Act;
>
> (g) for the purpose of enabling or assisting the Minister to exercise any power conferred on him by this Act or by any other written law;
>
> (h) for the purpose of enabling or assisting the Central Bank of Malaysia to discharge its functions under the Central Bank of Malaysia Act 1958 [Act 519], the Banking and Financial Institutions Act 1989 [Act 372] and the Islamic Banking Act 1983 /Act 276] or any other written law;
>
> (i) for the purpose of enabling or assisting the Commission to discharge its functions under this Act;
>
> (j) for the purpose of enabling or assisting a stock exchange or clearing house of a stock exchange to discharge its functions;
>
> (k) for the purpose of enabling or assisting auditors of a central depository and authorized depository agents to discharge their functions;
>
> (l) in a summary or collection of information, framed in such a way so as not to enable the identity of any depositor, to whom the information relates, to be ascertained.
>
> (2) Subject to the provisions of this Act, nothing in section 43 shall entitle any person to refuse to disclose any information or document to the Minister or the

Commission if the disclosure is required in the interests of investors or in the public interest.

[11] The plaintiff contends that this application for disclosure should be allowed as it falls under s 45(1)(c), (d), (j) and (l) of the Securities Industry (Central Depositories) Act 1991 and s 107G(c), (d), (e) and (h) of the Capital Markets and Services Act 2007.

[12] I opine that the plaintiff's reliance on s 45(1)(c), (d), (j) and (l) as well as Section 58 of the Securities Industry (Central Depositories) Act 1991, and s 107G(c), (d), (e) and (h) of the Capital Markets and Services Act 2007 to justify his application for discovery is misplaced.

[13] Firstly, I find that this application do not fall within the category of cases recognized under s 45(1)(c), (d), (j) and (l) of the Securities Industry (Central Depositories) Act 1991. The said provisos are only applicable if it is shown that the application is made by:

(a) Bursa Malaysia or its authorised agent institutes a civil proceeding against a depositor relating to the securities account of the depositor;

(b) a person authorized to investigate any offence under any law to ascertain any offence concerning the said securities account or the affairs of the depository suspected of the offence;

(c) the Commission to discharge its functions under the Act; and

(d) Bursa Malaysia as part of a summary of information for statistics purposes without providing specific information of the depositors.

[14] The plaintiff's personal claim against the defendants does not fall within any of the categories identified in those provisos.

[15] I note that the plaintiff's counsel relies on the decision of Abdul Malik Ishak J in *Bank Bumiputra (M) Bhd v Cheong Yoke Choy (Malaysian Central Depository Sdn Bhd, proposed intervener)* [2000] 7 MLJ 323; [2000] 7 CLJ 157.

[16] I find that reliance on that case is again misplaced. That decision has since been overturned by the Court of Appeal as shown in the orders produced Bursa Malaysia. The Court of Appeal did not allow for the said information to be provided to the Applicant in that case and held that the statutory prohibition remains applicable and cannot be overridden by the High Court. I attach the orders of the Court of Appeal as:

ANNEXURE A

DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
[RAYUAN SIVIL NO. J-02-142-2000]

ANTARA

MALAYSIAN CENTRAL DEPOSITORY
SDN BHD
(NO SYARIKAT: 165570 W) ... PERAYU

DAN

BANK BUMIPUTRA MALAYSIA BERHAD
CAWANGAN JOHOR BAHRU
(NO SYARIKAT: 6175-W) ... RESPONDEN

[Dalam Perkara Mengenai Mahkamah Tinggi Malaya Di Johor Bahru Guaman Sivil No.: 22-231-1998]

Antara

Bank Bumiputra Malaysia Berhad
Cawangan Johor Bahru
(No Syarikat: 6175-W) ... Plaintif

Dan

Cheong Yoke Choy
(No K/P Baru: 550324-10-5981)
(No K/P Lama: 4760742) ... Defendan

Dan

Malaysian Central Depository Sdn Bhd
(No Syarikat: 165570 W) Pencelah yang Dicadangkan]

KORAM:

Y.A. DATIN PADUKA ZALEHA BINTI ZAHARI, HMR

Y.A. DATO' NIHRUMALA SEGARA A/L M.K. PILLAY, HMR

Y.A. DATOK RAMLY BIN HAJI ALI, HMR

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DALAM MAHKAMAH TERBUKA

PAPA 28HB OKTOBER 2009

PERINTAH

RAYUAN INI ditetapkan untuk pendengaran pada hari ini dalam kehadiran Encik Nitin Nadkarni (Cik Yau Khai Ling bersamanya), peguam bagi pihak Perayu dan Encik Ibrahim bin Hashim (Encik Hassan bin Ibrahim bersamanya), peguam bagi pihak Responden DAN SETELAH MEMBACA Rekod Rayuan, Notis Rayuan yang difailkan pada 3 Mac 2000, yang kesemuanya difailkan di sini DAN SETELAH MENDENGAR hujahan pihak-pihak yang hadir MAKA ADALAH DENGAN INI DIPERINTAHKAN bahawa:

(a) Rayuan dibenarkan;

(b) Keputusan Mahkamah Tinggi bertarikh 28 Januari 2000 diketepikan;

(c) bahawa Perayu/Pencelah yang Dicadangkan diberi kebenaran untuk mencelah dalam

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presiding tindakan Mahkamah Tinggi tersebut dan menjadi salah satu pihak di; dalam tindakan Mahkamah Tinggi tersebut dan untuk mengambil bahagian di dalam tindakan Mahkamah Tinggi tersebut bagi tujuan mengetepi atau mengubah Perintah-Perintah Mahkamah Tinggi, masing-masing bertarikh 23hb Mei 1998, 1hb Jun 1998 dan 18hb Mei 1999;

(d) bahawa tajuk presiding tindakan Mahkamah Tinggi tersebut diubah di dalam presiding selanjutnya di dalam tindakan Mahkamah Tinggi itu, untuk menyertakan nama Perayu/Pencelah yang Dicadangkan sebagai Pencelah; dan

(e) Permohonan-permohonan di perenggan (3), (4) dan (5) pada Lampiran 2B (Saman dalam Kamar bertarikh 22 haribulan Julai 1999) tindakan Mahkamah Tinggi tersebut

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dikembalikan kepada Mahkamah Tinggi untuk pendengaran semula.

B

DIBERI di bawah tandatangan saya dan Meterai Mahkamah pada 28hb Oktober, 2009.

C

SURIYANILAKMA ABD KADIR
PENOLONG KANAN PENDAFTAR
MAHKAMAH RAYUAN MALAYSIA
PUTRAJAYA

D

E

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Perintah ini difailkan oleh Tetuan Lee Hishammuddin Allen & Gledhill (dahulunya dikenali sebagai Lee Hishammuddin) yang beralamat di Tingkat 16, Menara Tokio Marine Life, No. 189, Jalan Tun Razak, 50400 Kuala Lumpur, Peguamcara bagi pihak Perayu yang dinamakan di atas (No. Tel: 03-21612330/No. Faks: 03-21613933) (Ruj: RKC/DPN/16195) (Mydocslisa/F-order-16195)

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ANNEXURE B

DALAM MAHKAMAH TINGGI MALAYA DI JOHOR BAHRU

DALAM NEGERI JOHOR, MALAYSIA

[GUAMAN SIVIL NO. 22-231 TAHUN 1998]

Dalam Perkara Aturan 50 Kaedah 2 (3) Kaedah-Kaedah Mahkamah Tinggi, 1980

ANTARA

BANK BUMIPUTRA MALAYSIA BERHAD
CAWANG JOHOR BAHRU
(No Syarikat: 6175-W) ... PLAINTIF

DAN

CHEONG YOKE CHOY
(No K/P Baru: 550324-10-5981)
(No K/P Lama: 4760742) ... DEFENDAN

DAN

MALAYSIAN CENTRAL DEPOSITORY SDN BHD
(No Syarikat: 165570 W) ... PENCELAH

DI HADAPAN HAKIM
DATO' HUE SIEW KHENG
PAPA 17 OGOS 2011 DALAM KAMAR

PERINTAH

ATAS PERMOHONAN Pencelah yang dinamakan di atas DAN SETELAH MEMBACA Saman Dalam Kamar bertarikh 22 Julai 1999, Afidavit Benothini a/p Bascaran yang dikrarkan pada 21 Julai 1999 dan Afidavit Mohamed Bunos Bin Haji Ali yang dikrarkan pada 2 Ogos 1999 yang kesemuanya difailkan di sini DAN SETELAH MENDENGAR Cik Woo Mei Jing Peguam dalam Kamar bagi peguamcara pihak Pencelah and Encik Hasan Bin Ibrahim dan

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Encik Ibrahim peguam bagi pihak Plaintif **DENGAN PERSETUJUAN ADALAH DIPERINTAHKAN** seperti berikut:-

(1) bahawa perenggan 5 (c) Perintah bertarikh 23 Mei 1998 adalah dengan ini diubahkan untuk memperuntukkan:

"Bahawa Defendan dan/atau agen-agenya dan/atau wakil-wakilnya dan/atau pekerja-pekerjanya dan/atau pegawai-pegawainya dan/atau mana-mana Bank dan mana-mana Institusi Kewangan di Malaysia dan/atau ahli keluarga Defendan dan/atau mana-mana pihak yang ada urusan dengan Defendan yang keatasnya diserahkan perintah ini yang mempunyai kuasa dan/atau kawalan ke atas harta-harta Defendan yang sah di sisi undang-undang, setakat mana dibenarkan di bawah undang-undang untuk memberi, membuka, menzahir atau mendedah maklumat berkenaan, dan terutamanya mengecualikan pihak depositori pusat yang tertakluk kepada kewajipan untuk merahsiakan dan pendedahan-pendedahan yang tertentu sahaja yang dibenarkan sepertimana diperuntukkan di bawah seksyen-seksyen 43 dan 45 Akta Perindustrian Sekuriti (Depositori Pusat) 1991, memberitahu dan/atau menyatakan kepada Peguamcara Plaintif kesemua harta-hartanya sama ada boleh ubah atau tidak boleh ubah";

(2) bahawa bahagian itu dalam Perintah bertarikh 18 Mei 1999 daripada barisan penultimat muka-surat 1 hingga barisan 3 muka-surat 2 adalah dan dengan ini diubahkan untuk memperuntukkan menghapuskan seperti berikut:-

"bahawa Malaysian Central Depository Sdn Bhd (No. Syarikat: 165570-W) diarahkan membekalkan kepada

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Plaintif maklumat-maklumat penuh tentang syer yang dipegang oleh Defendan dalam syarikat tersebut"

(3) bahawa Pencelah tidak mempunyai kepentingan dalam sekuriti-sekuriti Defendan atau prosiding-prosiding penguatkuasaan oleh Plaintif terhadap Defendan dan oleh itu, tidak akan menentang permohonan penguatkuasaan Plaintif untuk perintah caj yang dibuat oleh Plaintif;

(4) bahawa ubahan-ubahan yang dibuat pada Perintah - Perintah Mahkamah bertarikh 23 Mei 1998 dan 18 Mei 1999 dibawah Perintah Persetujuan bertarikh 17 Ogos 2011 ("ubahan-ubahan") akan berkuatkuasa dari 17 Ogos 2011 dan untuk mengelakkan dari sebarang keraguan, tidak akan mempunyai kuatkuasa kebelakangan;

DAN AKHIRNYA ADALAH DIPERINTAHKAN bahawa tiada perintah terhadap kos.

Bertarikh pada 17 haribulan Ogos 2011.

Penolong Kanan Pendaftar,
Mahkamah Tinggi, Malaya
Johor Bahru

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[17] I am also of the opinion that the plaintiff's reliance on s 58(1)(c) of the Securities Industry (Central Depositories) Act 1991 is also misplaced. I reproduce the said statutory proviso:

(1) Where —

(c) on an application by any person aggrieved by an alleged contravention by another person of a relevant requirement, it appears to the High Court that —

(i) the other person has contravened the relevant requirement;

(ii) and the applicant is aggrieved by the contravention,

the High Court may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more or the following orders:

(aa) in the case of persistent or continuing breaches of this Act, or of the rules of a central depository, an order restraining a person from acting as an authorized depository agent or from holding himself out as so acting;

(bb) an order restraining the person from acquiring, disposing of or otherwise dealing with assets which the High Court is satisfied such person is reasonably likely to dispose of or otherwise deal with;

(cc) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;

(dd) an order appointing a receiver of the property of an authorized depository agent or of property that is held by an authorized depository agent for or on behalf of another person whether on trust or otherwise;

(ee) an order vesting securities that are specified in the order in the Commission or a trustee appointed by the High Court;

(ff) an order declaring the whole or any part of a contract relating to securities including a contract for the acquisition or disposal of securities, to be void, and if the High Court thinks fit, to have been void ab initio or at all times on or after a specified date before the order is made;

(gg) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under a relevant requirement, an order requiring such person to do such act or thing;

(hh) in a case of a contravention by a person of the rules of a central depository, an order giving directions concerning compliance with or enforcement of those rules to —

(i) the person; and

(ii) if the person is a body corporate, the directors of the body corporate;

(ii) in a case where the person is a director, an order removing him from office and that he be barred from becoming a director of any other public company for such period of time as may be determined by the High Court;

(iia) an order restraining the contravention;

(iib) an order requiring that person, or any other person who appears to have been knowingly involved in the contravention, to take such steps as the High Court may direct to remedy it or mitigate its effect, including making restitution to any other person aggrieved by such contravention;

(jj) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; and

(kk) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

...

(12) For the purposes of this section, *'relevant requirement'* —

(a) in relation to an application by the Commission under this section, means a requirement-

(i) which is imposed by or under this Act or any securities laws;

(ii) which is imposed as a condition or restriction of any approval that is given under or pursuant to this Act;

(iii) which is imposed by or under the rules of a central depository; or

(iv) which is imposed by or under any other law and the contravention of which constitutes an offence which the Commission has power to prosecute with the consent in writing of the Public Prosecutor;

(b) in relation to an application by the exchange holding company or central depository, means a requirement which is imposed by or under the rules of the central depository, as the case may be; and

(c) *in relation to an application by the aggrieved person, means a requirement* —

(i) *which is imposed by or under this Act;*

(ii) *which is imposed as a condition or restriction of any approval that is given under or pursuant to this Act; or*

(iii) *which is imposed by or under the rules of a central depository.*

(13) An application made pursuant to this section shall not prejudice any other action that may be taken by the Commission, exchange holding company, central depository or aggrieved person, as the case may be, under any securities laws, any other law or rules.

[18] I find that for that proviso to be applicable, the plaintiff must show the alleged breach of a relevant requirement. In other words, the plaintiff must show a breach of a requirement that is either imposed by the said Act, a breach of any condition or restriction or any approval that is given under the said Act or any breach of any condition or rule or restriction imposed by the rules of the central depository. The plaintiff has not shown the existence of any such breach in its affidavits or in the statement of claim justifying the exercise of such powers provided under s 58(1)(c) of the Securities Industry (Central Depositories) Act 1991.

[19] On the issue of the applicability of s 107G(c), (d), (e) and (h) of the

Capital Markets and Services Act 2007, I also find that the said proviso does not assist the plaintiff in any way whatsoever. I reproduce the said statutory proviso below:

> A person referred to in subsection 107F(1) shall not refuse to disclose any information or document —
>
> (a) which any person referred to in subsection 107J(1), has given permission in writing to disclose;
>
> (b) in the case where any person referred to in subsection 107J(1) is declared a bankrupt within or outside Malaysia;
>
> (c) for the purpose of instituting, or in the course of, any civil proceedings between a trade repository and any person referred to in subsection 107J(1);
>
> (d) to any person duly authorized to investigate into any offence under any law, and such disclosure being, in any case, limited to the affairs of any person referred to in subsection 107J(1);
>
> (e) for the purpose of enabling or assisting the Commission in the discharge of its function under the securities laws or any other written law;
>
> (f) for the purpose of enabling or assisting Bank Negara in giving effect to its objects or carrying out its functions under the Central Bank of Malaysia Act 2009 and any other written law enforced by Bank Negara;
>
> (g) for the purpose of risk assessment and monitoring by the Malaysia Deposit Insurance Corporation in the performance of its duties and functions under the Malaysia Deposit Insurance Corporation Act 2011 [Act 720] or
>
> (h) for the purpose of enabling or assisting auditors of a trade repository to discharge their function.

[20] Again, I do not find that the plaintiff has shown that this case falls within the category recognized under the said statutory proviso and whether Bursa Malaysia and the CDS scheme are bound by the said proviso to allow disclosure of such documents and information to the plaintiff. The plaintiff's reading of the said statutes is wrong and does not allow this court to allow the application for discovery as prayed for in Enclosure 50.

[21] There is no nexus between the plaintiff's claim as pleaded in this suit with the rights and powers granted to this Court under the above statutes relied on by Counsel for the plaintiff. I refer to the decision of Zabariah Yusof JCA (as she then was) in *Lai Soon Onn v Chew Fei Meng and other appeals* [2019] 2 MLJ 96:

> *Whether The plaintiff Has The Locus Standi And Existing Right*
>
> [33] We disagree with the argument of the plaintiff that his legal right as required

under s 41 of the SRA is triggered once he makes out a claim under the tort of unlawful conspiracy. There is no nexus between the declaratory relief sought, to the pleading of unlawful conspiracy. The tort of unlawful conspiracy does not give the court the power to grant the declaratory order that the defendants contravened the provisions of the CMSA. The plaintiff must have an existing legal right, to be entitled to the declaratory reliefs sought. What the plaintiff is seeking from this court is for reliefs which he is not entitled to under ss 357 and 360 of the CMSA.

Sections 357(1) and 360 of the CMSA do not empower the court to grant the plaintiff the declaratory reliefs sought for. Section 357(1) of the CMSA is to cater for the recovery of pecuniary losses and s 360 of the CMSA confers the court with a discretionary power to make a variety of orders (which will be elaborated in detail in the later part of this judgment).

The facts and circumstances of the present case show that the plaintiff does not possess the required standing or the legal right to seek for the declaratory reliefs prayed for, in the claim.

Section 357 and section 360 of the CMSA

[46] Apart from s 357 of the CMSA, the plaintiff also relies on s 360 of the CMSA in his claim against the defendants. The plaintiff submits that the learned JC erred when she concluded that s 360 of the CMSA was not applicable because the obligation on the part of the defendants to make a take-over offer was not a 'relevant requirement' under s 360 of the CMSA. The learned JC premised her decision on the fact that the word 'requirement' does not appear in ss 217-220 of the CMSA. The effect of the learned JC's decision would be that s 360 of the CMSA is only applicable to a breach or contravention of the provisions in CMSA where the word 'relevant requirement' appears. The plaintiff submitted that this is where the learned JC erred when the word 'requirement' must be given its ordinary meaning ie, a requirement which is imposed by or under the CMSA. There is nothing in s 360 of the CMSA which limits its application to breach or non-compliance where the word 'requirement' appears. In any event, plaintiff is of the view that the word 'relevant requirement' under s 360 of the CMSA is a novel area of the law which has not been specifically considered by the Federal Court. In the circumstances, the plaintiff submits that further argument on this novel point of law is necessary and therefore, the plaintiffs claim is unsuitable to be struck out.

[47] We are not persuaded by the arguments from the plaintiff in this respect.

Firstly, although this may be a novel point of law, it does not justify it going to trial as the facts are not in dispute. The issues are in relation to the interpretation of ss 357 and 360 of the CMSA, therefore it concerns the construction of the relevant sections of the CMSA. Evidence of witnesses with regard to the construction of provisions of the CMSA is of no effect and irrelevant.

Secondly, we agree with the learned JC's findings that ss 357 and 360 of the CMSA cater for two separate eventualities.

Section 357 of the CMSA is a specific provision which confers the right to a plaintiff to claim for pecuniary losses due to the act of the other party who had contravened the provisions of CMSA or its regulations, whilst s 360 of the CMSA is a general

provision which confers upon the court with discretion to make various orders where it appears to the court that certain persons had 'contravened a relevant requirement'. Section 360 of the CMSA confers the right to claim on three classes of persons or bodies to apply to court to make one or two of the orders as prescribed in s 360(1)(A) to (P) of the same. The three classes of persons are:

(i) The SC (s 360(1)(a) and (b) of the CMSA);

(ii) The Bursa, exchange holding company, futures exchange or an approved clearing house (s 360(1)(c) of the CMSA);

(iii) a person aggrieved by an alleged contravention by another person of a relevant requirement (s 360(1)(d) of the CMSA).

[48] The word 'relevant requirement' is used in s 360(1)(a), (c) and (d) of the CMSA. It appears from the reading of s 360 of the CMSA that a contravention of a 'relevant requirement' is a condition precedent before a person aggrieved can invoke s. 360 of the CMSA.

[49] The word 'aggrieved person' is not defined in the CMSA, however, under s 360(1)(d) of the CMSA, it appears that an 'aggrieved person' is a person aggrieved by an alleged contravention by another person of a 'relevant requirement.' The term 'relevant requirement' is defined in s. 360(13)(c) of the CMSA where it provides that:

> [13] For the purposes of this section, 'relevant requirement':
>
> (c) in relation to an application by the aggrieved person, means a requirement: which is imposed by or under this Act; which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws; which is imposed by or under the rules of a stock exchange, a derivatives exchange or an approved clearing house. (Emphasis added.)

[50] The usage of the word 'means' in s 360(13)(c) of the CMSA indicates that 'relevant requirement' is meant to be exhaustive, restrictive and not open-ended, as opposed to the word 'includes', (refer to *Yii Ming Tuna v Public Prosecutor* [2015] 3 MLJ 596; [2014] 9 CLJ 1102 and T*enaga Nasional Bhd v Tekali Prospecting Sdn Bhd* [2002] 2 MLJ 707; [2002] 3 CLJ 624).

[51] The CMSA expressly provides for requirements to be complied with in various sections of the Act, namely:

(i) s 58 — Requirement for Capital Markets Services Licence;

(ii) s 59 — Requirement for Capital Markets Services Representative's Licence;

(iii) s 67 — Minimum financial requirements;

(iv) s 139B — Requirement for approval to establish or operate a private retirement scheme administrator;

(v) s 212 — Requirement for approval, registration, authorisation or recognition;

(vi) s 232 — Requirement to register prospectus in relation to securities;

(vii) s 234 — Requirement to lodge prospectus with Registrar;

(viii) s 258 — Requirement for trust deed and trustee;

(ix) s 288 — Requirement for trustee and deed.'

[22] Although that case concerns the issue of locus standi of a litigant when dealing with the rights under s 360 of the CMSA, the manner in which statutory provisos are read and applied will also be applicable to this case. It would be wrong for this Court to read the said statutes that are relied on in the manner suggested by the plaintiff's Counsel. Parliament did not allow for the discovery of the information and documents held in the CDS accounts unless they are specifically allowed in the said Act. I therefore cannot entertain the plaintiff's application as prayed for in Enclosure 50.

[23] My decision is further fortified by the decision of the Federal Court in *Suruhanjaya Sekuriti v Datuk Ishak bin Ismail* [2016] 1 MLJ 733; [2016] 3 CLJ 19 where Ahmad Maarop FCJ held:

> [31] Essentially, the Court of Appeal allowed the disclosure of the s 134 statements because it held that s 134(4) of the SCA was clear that statements made under s 134 were admissible in evidence. That, in our view, is an over simplification of the crucial issue in the case especially in view of a claim of privilege from disclosure of the s 134 statements. Evidence is admissible and should be received by the court unless there is legal reason for its exclusion. Evidence of relevant facts becomes inadmissible when its reception offends against public policy (or public interest) or a particular rule of law, an example of which is evidence of matters which are privileged against disclosure. Explaining this, the Supreme Court of India in *State of Uttar Pradesh v Raj Narain & Ors* AIR 1975 SC 865 (referred to in *BA Rao & Ors v Sapuran Kaur & Anor* [1978] 2 MLJ 146; [1978] 1 LNS 14 (FC)) said:
>
> > 24. Evidence is admissible and should be received by the court to which it is tendered unless there is a legal reason for its rejection. Admissibility presupposes relevancy. Admissibility also denotes the absence of any applicable rule of exclusion. Facts should not be received in evidence unless they are both relevant and admissible. The principal rules of exclusion under which evidence becomes inadmissible are two-fold. First, evidence of relevant facts is inadmissible when its reception offends against public policy or a particular rule of law. Some matters are privileged from disclosure. A party is sometimes estopped from proving facts and these facts are therefore inadmissible. The exclusion of evidence of opinion and of extrinsic evidence of the contents of some documents is again a rule of law. Second, relevant facts are, subject to recognised exceptions inadmissible unless they are proved by the best or the prescribed evidence.
> >
> > 25. A witness, though competent generally to give evidence, may in certain cases claim privilege as a ground for refusing to disclose matter which is relevant to the issue. Secrets of state papers, confidential official documents and communications between the Government and its officers or between such

officers are privileged from production on the ground of public policy or as being detrimental to the public interest or service.

[32] In other words, the provision under s 134(4) of the SCA must be read subject to the rules of privilege and prohibition on the grounds of public policy. In our view, this applies to civil as well as criminal proceedings. In the context of the present appeal, the relevant and applicable rules for consideration are housed in ss 123 and 124 of the Evidence Act 1950. Explaining that ss. 123 and 124 of the Indian Evidence Act (similar to ss 123 and 124 of our Evidence Act 1950), constituted a clear departure from the ordinary rules of evidence under which all material documents must be produced, the High Court of Andhra Pradesh in *State of AP v PS Ismail* [1973] Cri LJ 931 said:

> Sections 123, 124 and 125 of the Act constitute a clear and significant departure from the ordinary rules of evidence whereunder all the material documents had to be proved or else the presumption under Section 114 will have to be drawn. The aforesaid provisions do not permit any adverse inference or presumption under Section 114 where the concerned party is the State and the disclosure of the information or source is detrimental to public interests. The basis and foundation of the deviation from the ordinary rules of evidence where the concerned party is the State is public interest which is paramount. Where a conflict between public and private interests arises, the former must prevail. To put it differently, private interests must yield to or give way to public interests whenever a conflict arises between the two.

[33] Indeed, the extreme importance of the exclusionary rules which exclude evidence the disclosure of which would be injurious to the public interest is clearly seen in O 24 r 15 of the RHC which provides that the provision of O 24 on disclosure 'shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest'.

[34] Thus, if either s 123 or s 124 of the Evidence Act 1950 applies, the 134 statements from witnesses in this case shall not be disclosed.'

[24] For the above reasons, I dismiss the plaintiff's application with costs.

Plaintiff's application dismissed with costs.

Reported by Dzulqarnain Ab Fatar